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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,809	02/08/2002	Michael J. Rochon	11009-0019	9593

7590 02/17/2004

Clark & Brody
Suite 600
1750 K Street, NW
Washington, DC 20006

EXAMINER
PAK, JOHN D

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/067,809	ROCHON, MICHAEL J.	
	Examiner	Art Unit	
	JOHN D PAK	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-10,12-40 and 42-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2,4-10,12-40,42-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1-2, 4-10, 12-40 and 42-54 are pending in this application.

Upon further review and reconsideration, applicant is advised that the election of species requirement (see the Office Action of 8/31/02) is hereby withdrawn. Pending claims will be examined in full herein.

The terminal disclaimer filed on 3/31/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,346,279 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 4-10, 12-40 and 42-54 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/028,373. Although the conflicting claims

are not identical, they are not patentably distinct from each other because the combinations of hydrogen peroxide, phosphorous based acid and anionic surfactants overlap in type and concentrations. With the claims of the 10/028,373, the ordinary skilled artisan would have readily recognized the claims of this application to be obvious variants thereof, because the composition ingredients and concentrations are either the same or similar and overlapping.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

It is noted for the record that the grounds of rejection set forth below are directed to subject matter that is outside the scope of the claimed subject matter in U.S. Patent No. 6,346,279, which issued from the parent application to the instant application. Any statement made hereinbelow is directed to subject matter that is not encompassed by the claimed subject matter of said patent.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

> granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-7, 9, 12-15, 46 and 47 stand rejected under 35 U.S.C. 102(e) as being anticipated by Micciche et al. (US 6,043,209) for the reasons of record.

Applicant's arguments relative hereto have been given due consideration but they were deemed unpersuasive. Given the withdrawal of the election of species requirement, Micciche et al. expressly disclose every element of the claimed invention, including the surfactant sodium lauryl sulfate, which meets applicant's alkali metal C8-18 alkyl sulfates.

Claims 1, 4-6, 9, 12-15, 22, 24, 28, 46-47, 49-50 and 52 stand rejected under 35 U.S.C. 102(b) as being anticipated by Silvaggi et al. (WO 98/18894) for the reasons of record.

Applicant's arguments relative hereto have been given due consideration but they were deemed unpersuasive. Given the withdrawal of the election of species requirement, Silvaggi et al. expressly disclose every element of the claimed invention, including the surfactant sodium C8-22 alkyl sulfates, which meet applicant's alkali metal C8-18 alkyl sulfates (see in Silvaggi et al., page 27, line 22 to page 29, line 9).

Upon further review and reconsideration, rejection under 35 USC 102(b) of claims 1-2, 4-7, 9-10, 12-15, 18, 20-23, 26-27, 32-33, 35-37, 39, 42-44, 46-49, 51, and 54 over Greene et al. (US 4,518,585) is hereby withdrawn. Given the large number of permutations that Greene's disclosure is open to, the specific combination of hydrogen peroxide + phosphorous based acid + the specific anionic surfactants, as claimed by applicant, does not appear to be anticipated by Greene's disclosure, particularly in view of the disclosed preferred status of nonionic surfactants (column 3, lines 53-54). While preferred embodiments do not necessarily lead away from anticipatory finding, here, the permutations that one skilled in the art would have had to go through to arrive at the claimed invention render the presently reconsidered determination that Greene's disclosure does not anticipate the claimed invention.

Upon further review and reconsideration, in view of applicant's arguments and Omidbakhsh affidavit of 11/10/03, taken with the Ramirez affidavit of 2/8/02, all grounds of rejection under 35 USC 103(a) are hereby withdrawn.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620, effective February 3, 2004.** The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Thurman Page, can be reached on (571)272-0602, effective February 3, 2004.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1235.

JOHN PAK
PRIMARY EXAMINER
GROUP 1600